

1 THE HONORABLE MARSHA J. PECHMAN
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

10 REC SOFTWARE USA, INC., a Virginia
11 corporation

Case No. 14-cv-01025-MJP (Lead Case)

12 Plaintiff,

13 v.
14 **JOINT RULE 26(f) REPORT**
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HTC AMERICA, INC., a Washington
corporation

Defendant.

REC Software USA, Inc. v.
Casio Computer Co. Ltd.

Case No. 14-cv-1047-MJP (Non-Lead Case)

REC Software USA, Inc. v.
Dell Inc. *et al.*

Case No. 14-cv-1048-MJP (Non-Lead Case)

REC Software USA, Inc. v.
Huawei Device USA Inc. *et al.*

Case No. 14-cv-1050-MJP (Non-Lead Case)

REC Software USA, Inc. v.
LG Electronics USA Inc. *et al.*

Case No. 14-cv-1053-MJP (Non-Lead Case)

REC Software USA, Inc. v.
Motorola Mobility LLC

Case No. 14-cv-1056-MJP (Non-Lead Case)

REC Software USA, Inc. v.
Samsung Electronics America, Inc. *et al.*

Case No. 14-cv-1059-MJP (Non-Lead Case)

REC Software USA Inc. v.
Sony Mobile Communications (USA) Inc.

Case No. 14-cv-1060-MJP (Non-Lead Case)

REC Software USA, Inc. v.
ZTE (USA) Inc.

Case No. 14-cv-1062-MJP (Non-Lead Case)

JOINT RULE 26(f) REPORT
(14-cv-01025-MJP) - 1

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1 Pursuant to Fed. R. Civ. P. 26(f), LCR 26(f)(1) and LPR 110, counsel for all parties to the
 2 “Lead Case” and “Non-Lead Cases” (both as defined in the Court’s Order Granting Stipulated
 3 Motion to Consolidate for Discovery Purposes (the “Discovery Consolidation Order”), Doc. No.
 4 26, Case No. 2:14-cv-01025-MJP, entered November 14, 2014) present this Joint Rule 26(f)
 5 Report. The parties conducted a Rule 26(f) conference to address the topics required by the
 6 Federal and Local Civil and Patent Rules, as set forth below.

7 **1. Discovery Plan**

8 **a. Initial disclosures.** The parties to the Lead Case and Non-Lead Cases
 9 (together, the “Related Cases”) jointly agreed to forego initial disclosures pursuant to Fed. R.
 10 Civ. P. 26(a).

11 **b. Subjects, timing, and potential phasing of discovery.**

12 As a general matter, the subjects on which discovery may be needed include issues of
 13 infringement, damages, and validity. The parties have proposed deadlines for the completion of
 14 claim construction and overall discovery, as reflected in the Joint Proposed Trial Schedule filed
 15 on November 14, 2014. *See* ECF No. 26. The parties agree that any claim construction
 16 discovery should be included within and governed by any overall limits established with respect
 17 to discovery in the Related Cases, and do not propose any specific claim construction discovery
 18 or any specific limits thereon.

19 Defendants additionally believe that some phasing of email discovery is appropriate and
 20 plan to address this in their modifications to the Model Agreement Regarding Discovery of
 21 Electronically Stored Information (*see* paragraph 1(c)).

22 Because defendants intend to bring dispositive motions prior to claim construction (*see*
 23 paragraph 2(f)), plaintiff believes that it is not appropriate to phase email discovery in the
 24 manner proposed by defendants.

25 **c. Electronically Stored Information.** The parties anticipate that this case will
 26 require the preservation and production of Electronically Stored Information (“ESI”). Plaintiff

1 agrees to adopt the Model Agreement Regarding Discovery of Electronically Stored Information
 2 in Civil Litigation developed by the Court and made available on the Court's website (the
 3 "Model ESI Agreement"), without modification. Defendants agree to adopt an appropriately
 4 modified version of the Model ESI Agreement. The parties are currently working to negotiate a
 5 mutually acceptable version of the Model ESI Agreement.

6 **d. Privilege issues.** The parties agree that privilege logs will not be required for
 7 communications between or among outside litigation counsel, and their clients during the course
 8 of any litigation for which such outside litigation counsel was engaged. The parties do not
 9 currently anticipate any special issues related to privilege.

10 **e. Proposed limitations on discovery.** The parties agree that some changes to
 11 the limitations on discovery imposed under the Federal Rules are appropriate, but the parties
 12 disagree with respect to the details of the changes. The parties' respective positions are set forth
 13 below:

14 **i. Interrogatories**

15 Plaintiff proposes to limit interrogatories as follows: Plaintiff shall have no more than 30
 16 interrogatories in each Related Case. All defendants in all Related Cases together shall have 20
 17 common interrogatories, and each defendant group (that is, all defendants in each Related Case)
 18 shall additionally be permitted to serve 10 individual interrogatories in the Related Case to which
 19 the defendant group is a party.

20 Defendants propose that Plaintiff shall have no more than 30 interrogatories in each
 21 Related Case. Defendants shall have 20 common interrogatories and 10 individual interrogatories
 22 in each Related Case (i.e., a number equal to Plaintiff's).

23 **ii. Depositions**

24 Plaintiff proposes to limit depositions as follows: All depositions shall be noticed in the
 25 Lead Case, each witness shall be deposed only once in connection with all of the Related Cases,
 26 and each deposition may be used in each of the Related Cases, subject to all evidentiary rules.

Unless otherwise agreed to by the parties, all depositions shall be limited to 7 hours of deposition time per side. That is, plaintiff shall be entitled to 7 hours of deposition time and all defendants in all Related Cases, collectively, shall be entitled to 7 hours of deposition time.

Defendants agree that all depositions shall be noticed in the Lead Case and that each deposition may be used in each of the Related Cases, subject to the evidentiary rules. Defendants further propose to limit depositions as follows:

- Party depositions (including of current and former employees and pursuant to Fed. R. Civ. Proc. 30(b)(6)) shall be limited to 100 hours/side, with no party to be subject to more than 50 hours of combined employee and Rule 30(b)(6) depositions. To the extent REC offers Stephen Pickett as a representative for purposes of Rule 30(b)(6), Mr. Pickett shall be subject to 7 hours of deposition time in his personal capacity in addition to any testimony he provides pursuant to Rule 30(b)(6).
 - If an expert opines about issues specific to multiple parties (e.g., damages experts), the expert may be deposed for up 14 hours plus 2 hours for each defendant opined about. If an expert opines about issues that are not specific to any party (e.g., invalidity experts), the expert may be deposed for up to 7 hours.
 - Third-party depositions shall be limited to 50 hours per side.

iii. Requests for Admission.

Plaintiff believes that the limitations and protections set forth in the Federal Rules and Local Rules with respect to requests for admission are more than sufficient, and plaintiff therefore does not propose any changes to those limitations and protections.

Defendants propose that Plaintiff shall have no more than 30 requests for admission in each Related Case. Defendants shall have 15 common requests for admission and 15 individual requests for admission in each Related Case. However, there shall be no limit on requests for admission served for purposes of authentication or establishing publication or public use.

f. Need for discovery-related orders. The parties agree that a protective order

**JOINT RULE 26(f) REPORT
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1 should be entered to protect confidential and proprietary information. The parties have
 2 completed negotiations regarding the form of a protective order and are unable to reach
 3 agreement on a form of protective order. Accordingly, the parties intend to file a joint motion
 4 for entry of a protective order setting forth the parties' respective positions.

5 **2. Local Civil Rule 26(f)(1) Items**

6 **a. Prompt case resolution.** The parties have engaged in preliminary
 7 discussions regarding the prompt resolution of this matter, but do not anticipate taking any
 8 further immediate measures to resolve the matter.

9 **b. ADR.** The parties agree that ADR may be useful in this case, but it is
 10 currently premature. The parties agree to discuss ADR, including mediation, to occur after
 11 defendants serve their non-infringement and invalidity contentions.

12 **c. Related cases.** On November 14, 2014, the Court granted the parties'
 13 Stipulated Motion to Consolidate for Discovery Purposes with respect to the Related Cases
 14 pending before this Court. *See* ECF No. 27. Pursuant to this order, all filings relating to any of
 15 the Related Cases are to be filed in the Lead Case, Case No. 14-cv-01025-MJP.

16 **d. Discovery management.** Beyond the limitations addressed above in
 17 paragraph 1(e), the parties do not believe special measures are needed to minimize discovery
 18 expenses.

19 **e. Anticipated discovery.** The parties intend to take depositions and propound
 20 interrogatories, requests for production, and requests for admission on the topics referenced in
 21 Section 1(b).

22 **f. Phasing motions.**

23 Plaintiff does not plan to bring any motion for preliminary injunction or any dispositive
 24 motion before the Claim Construction Hearing.

25 Defendants anticipate seeking the Court's leave to bring certain dispositive motions prior
 26 to the Claim Construction Hearing, including on the issues of no joint infringement and

1 invalidity under 35 U.S.C. § 101. ZTE plans to bring dispositive motions as early as feasible on
 2 or related to the issue of remedies and liability.

3 **g. Preservation of discoverable information.** The parties have taken steps to
 4 ensure that all discoverable information is preserved.

5 **h. Privilege issues.** The parties' views and agreements on privilege issues are
 6 set forth above in paragraph 1(d).

7 **i. Model Protocol for Discovery of ESI.** As discussed above in paragraph 1(c),
 8 the parties anticipate adopting the Model ESI Agreement or an appropriately modified version of
 9 the Model ESI Agreement.

10 **3. Local Patent Rule 110 Items**

11 The following section addresses the additional items identified by Local Patent Rule 110,
 12 to the extent these are not otherwise covered by Sections 1 and 2 of this Joint Report.

13 **a. Changes to Local Patent Rule limitations on discovery.** None.

14 **b. Orders under Federal Rule 26(c), Rule 16(b) or 16(c).** None.

15 **c. Proposed modifications to Local Patent Rule deadlines.** The parties have
 16 submitted a Joint Proposed Trial Schedule, setting forth the parties' proposed deadlines for
 17 contentions, claim construction, discovery, and dispositive motions, as well as proposed trial
 18 dates. *See* ECF No. 26.

19 **d. Confidentiality concerns.** The Local Patent Rule disclosures will raise
 20 confidentiality concerns. As discussed in paragraph 1(f), the parties anticipate filing a motion for
 21 protective order with the Court.

22 **e. Technology tutorial.**

23 Plaintiff believes that the parties will be able to provide any necessary or helpful
 24 background information concerning the technology in connection with the claim construction
 25 briefing and claim construction hearing. Accordingly, plaintiff does not propose to schedule a
 26 separate technology tutorial for the Court, unless requested by the Court.

1 Defendants believe that holding a technology tutorial in connection with claim
2 construction proceedings will be helpful and appropriate. Defendants propose that any such
3 technology tutorial be scheduled approximately two weeks prior to the claim construction
4 hearing, at the Court's convenience, and believe that a one-hour tutorial (with the time to be split
5 evenly between the two sides) will be sufficient.

6 **f. Court-appointed expert.** The parties do not propose the appointment of an
7 expert to hear and make recommendations on claim construction issues.

8 **g. Nature of the Claim Construction Hearing.** The Court has scheduled a
9 five-hour Claim Construction Hearing to occur on June 26, 2015 (*see* ECF No. 40). The parties
10 shall provide further recommendations regarding the proposed structure of the Claim
11 Construction Hearing as required by Local Patent Rule 132.

12 **h. Scheduling conference.** The parties do not believe a Scheduling Conference
13 is necessary to address the issues raised in this report.

14 DATED this 24th day of December, 2014.

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